

February 2, 2012

The Honorable Tim Owens, Chairperson
Senate Committee on Judiciary
Statehouse, Room 559-S
Topeka, Kansas 66612

Dear Senator Owens:

SUBJECT: Fiscal Note for SB 291 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 291 is respectfully submitted to your committee.

Under current law, the spendthrift provision in the terms of a trust is presumed to constitute a material purpose of the trust. SB 291 would change that provision to allow it to be treated like any other trust provision, so that it would be up to the court to determine if it is a material purpose. In order to bridge the disconnect between probate estates and trusts, so that all claims against a decedent could be determined in one proceeding, the bill includes procedures applicable to claims by creditors of settlors of revocable trusts, which remain viable despite the settlor's death. The bill states that such claims are barred under the same nonclaim period as applies to estates and would clarify that the procedure to reach the assets of either an estate or trust would be to file claim in the probate court. The probate court would be given the authority to deal with payment of claims against revocable trusts.

SB 291 would also amend current law so that, in order to bind the trust, the trustee must be given notice of the probate hearing. However, if the trustee is not notified of the hearing, the assets of the revocable trust are not subject to a claim allowed in such probate proceedings, unless the trustee is subsequently notified of the claim by the creditor within one year of the death of the decedent, and the claim is allowed in a subsequent hearing in an amount not to exceed that allowed in a prior hearing. The bill would allow a trustee of a revocable trust to pay a legitimate claim, even if it has not been filed and allowed in a probate proceeding after determining the payment is appropriate, and makes clear that all assets of a decedent which were exempt from the claims of creditors immediately prior to the decedent's death remain exempt from the claims of creditors following the decedent's death, including the proceeds from the property. SB 291 also incorporates the same order of priority in satisfying creditor claims from assets in a revocable trust as applies to probate assets. The bill would also remove the trust's

The Honorable Tim Owens, Chairperson

February 2, 2012

Page 2—291

taxpayer identification number from the list of information a trustee may furnish a qualified beneficiary in lieu of furnishing a copy of the trust.

According to the Office of Judicial Administration, passage of SB 291 would have no fiscal effect on the Judicial Branch or local governments.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", with a long horizontal flourish extending to the right.

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Mary Rinehart, Judiciary